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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO/OAKLAND DIVISION**

13 **B&O MANUFACTURING, INC.,**

14 Plaintiff,

15 v.

16 **HOME DEPOT U.S.A., INC.,**

17 Defendant.

Case No.: C 07-02864 JSW

**STIPULATION AND [PROPOSED]
ORDER CONTINUING HEARING DATE
ON MOTION TO TRANSFER VENUE
TO THE NORTHERN DISTRICT OF
GEORGIA AND TO DISMISS COUNTS
TWO THROUGH FIVE OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT
AND SCHEDULING ORDER**

18
19 The Motion of Defendant Home Depot U.S.A., Inc. to transfer the case to the Northern
20 District of Georgia and to dismiss counts 2 through 5 of the Second Amended Complaint is currently
21 set for hearing before this Court on September 21, 2007, at 9:00 a.m. The Court has also set the
22 Case Management Conference for hearing on September 21, 2007, following the hearing on the
23 above-referenced Motion.

24 Plaintiff's counsel is a two-attorney law firm. Only one attorney, Paul E. Rice, has any
25 familiarity with this case. On August 13, 2007, Paul E. Rice, Plaintiff's counsel, received a
26 telephone call that his father, who lived in Farmington Hills, Michigan, had passed away. Plaintiff's
27 counsel promptly made arrangements to travel to Michigan and took a redeye flight that night.
28

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1 Funeral services were held on Wednesday, August 15, 2007. Plaintiff's counsel returned
 2 home late in the evening of August 20, 2007.

3 Since returning, a considerable amount of his time has been spent in tending to details related
 4 to his father's death, such as, but not limited to, communications regarding pension benefits for his
 5 mother, arranging for Medicare supplemental coverage for his mother, et cetera.

6 Additionally, his wife is scheduled for surgery on August 28, 2007. He will be out of the
 7 office most or all of the day attending to his wife. Further, previously scheduled depositions in
 8 another matter are set to take place all day on August 30, 2007. Two of the three witnesses are non-
 9 party witnesses who were subpoenaed to attend. Plaintiff's counsel simply is unable to do the
 10 requisite work necessary to timely file an appropriate Opposition to Defendant's Motion, by the
 11 current deadline of August 31, 2007.

12 Plaintiff's counsel is also scheduled to be out of town for a substantial portion of the month
 13 of October for a long-awaited vacation, which is being taken to celebrate his wife's sixtieth birthday
 14 and her recovery from a serious illness.

15 Accordingly, the parties jointly request that the hearing date on Defendant's Motion be
 16 continued to Friday, November 2, 2007, at 9:00 a.m., with the Case Management Conference to
 17 immediately follow the hearing on said Motion. The parties further request that Plaintiff be
 18 permitted to file any Opposition to Defendant's Motion not later than October 5, 2007. The parties
 19 further request that Defendant be permitted to file its Reply not later than October 19, 2007.

20 The prior time modifications in this case consist of a Stipulation Extending Defendant's time
 21 to respond to Plaintiff's Complaint. The parties anticipate that the requested time modification will
 22 have no significant effect on the schedule for the case.

23
 24 Dated: August 27, 2007

RICE & BRONITSKY

25
 26 By: 

27 Paul E. Rice
 28 Attorneys for Plaintiff
 B&O MANUFACTURING, INC.

1 Dated: August 27, 2007

BONDURANT, MIXSON & ELMORE LLP

2
3 By: 

4 Christopher T. Giovinazzo
5 Attorneys for Defendant
6 Home Depot U.S.A., Inc.

7 Good cause being shown, IT IS HEREBY ORDERED that the hearing on Defendant's
8 Motion to Transfer Venue to the Northern District of Georgia and to Dismiss Counts Two Through
9 Five of Plaintiff's Second Amended Complaint, previously set for September 21, 2007, at 9:00 a.m.,
10 is hereby continued to November 2, 2007.

11 It is further ordered that any Opposition of Plaintiff shall be filed not later than
12 October 5 _____, 2007.

13 It is further ordered that any Reply shall be filed not later than October 12,
14 2007.

15 It is further ordered that the Case Management Conference, previously set for September 21,
16 2007, shall be heard immediately following the hearing on Defendant's Motion.

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18
19 Dated: August 27, 2007, 2007


United States District Judge